IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4590 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ADODIYA SUNILBHAI VIKRAMBHAI PARMAR

Versus

DISTRICT MAGISTRATE 3RD SPECIAL LAND ACQUISITION

Appearance:

MS DR KACHHAVAH for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated passed by the District Magistrate, Bhavnagar and he has been declared as

bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Ms D.R.Kachwah has restricted her arguments only on the point that there is improper exercise of powers under Section 9 (2) of the PASA Act as the statements of the witnesses have been recorded by the authority on 8-2-2000 and verified by the Dy. S.P. on 9-2-2000 and the order of detention has been passed on 9-3-2000. Learned counsel for the petitioner has drawn my attention towards the above statement and argued that the authority has only mentioned " verified contents". As per the arguments of the learned counsel for the petitioner this is not verification in the eye of law. In support of this contention, learned counsel for the petitioner has relied upon a decision reported in 1996 (1) G.L.H. Jakirbhai Rahimbhai Nagori v. District Magistrate, Mehsana & Others wherein at head note the Court has held as under :

> "Claim of privilege by the detaining authority in respect of statements of witnessesThe Superintendent of Police, who examined the statements at the instance of detaining authority wrote below every statement one word "verified" - Held that claim of privilege made by the detaining authority on the basis of such endorsement was not genuineContinued detention illegal- Observations of Division Bench in the case of Koli Ashwin v. State of Gujarat in Special Criminal Application No.1812 of 1993 relied on."

4. In view of the above discussion, the order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

5. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 9-3-2000 passed against the detenu is hereby quashed. The petitioner- detenu Adodiya Sunilbhai Vikrambhai Parmar is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made

absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai